



Kathy Keolker, Mayor

CITY OF RENTON

Planning/Building/Public Works Department

Gregg Zimmerman P.E., Administrator

May 19, 2006

Bill Moore
Municipal Stormwater NPDES Phase II Comment
Washington State Department of Ecology
P O Box 47696
Olympia, WA 98504-7696

Department of Ecology
Water Quality Program
MAY 22 2006

SUBJECT: Ecology Preliminary Draft NPDES Phase II Municipal Stormwater Permit – Review Comments

Dear Mr. Moore and Ecology Permit Staff:

The following is the City of Renton's comments regarding the February 15, 2006 Public Review Draft of the Western Washington National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water Permit (Draft NPDES Permit). Renton recommends the following comments be used in reshaping the permit, in order to equitably proportion the permit requirements.

We are concerned that the Draft NPDES Permit requirements well exceed the Federal NPDES Phase II Storm Water Permit standards, which may result in significant noncompliance by permit holders and cause unnecessary and unjustified liability. The stricter guidelines could inevitably result in legal actions from permit holders, property owners, developers, environmental groups, etc., due to unachievable permit requirements. These permit requirements cause an imbalance between practical application, efficient and responsible use of public funds and protecting the environment, and minimizing liability to the permit holders and complying with federal stormwater discharge mandates.

Pre-development conditions requiring use of Appendix 1

The City requests the pre-development condition proposed by Ecology (existing urban environments are required to match forested conditions) be changed to match existing conditions. The City believes requiring developments and redevelopments to achieve unattainable duration and peak flows for existing buildings and parking lots, to "prehistoric" conditions is a "takings" and would subject the City to significant litigation claims from property owners and developers. This could result in significant cost implications for redevelopment projects in highly urbanized areas, and has local jurisdictions and attorneys concerned about vested rights. Specifically, we cite the *Nollan vs. California Coastal Commission* and the *Dolan vs. the City of Tigard* cases, which places the Phase II permit language in a very problematic stance due to a lack of "nexus" and "proportionality" linkages to the development conditions imposed. Existing developed sites may have a vested level of development under the State Environmental Policy Act and state vesting law. The permit conditions fail to recognize these potential legal rights. In addition, the permit potentially conflicts with the Growth Management Act by increasing the requirements and cost for redevelopment projects to be equal to the cost to manage storm water run-off from undeveloped lands. This could discourage



redevelopment projects and promote development of undeveloped lands, which could cause the need to expand urban growth boundaries. The added cost will make it more difficult to provide affordable housing and will discourage redevelopment in urban areas, where existing infrastructure is available to provide the required urban services (transportation, police, fire, utilities, etc.)

We strongly recommend Ecology reconsider the Appendix 1 approach to flow control mitigation and change the pre-development condition to "existing conditions". Applying the pre-developed, fully forested condition to existing fully impervious areas (i.e. in existing downtown areas needing redevelopment) will hamper future improvements in the area. The City feels the water quality requirements are adequately addressed within the permit, but the flow control requirement for existing impervious area projects should be modified to existing conditions run-off release rates.

Monitoring and Assessment of Best Management Practices (BMPs) for Post Construction

The Draft NPDES Permit requires the City of Renton and other MS4s to follow Ecology's Stormwater Guidance Manual, apply BMPs to the Maximum Extent Practicable (MEP), use Ecology's approved BMPs and develop a monitoring plan for Ecology's BMPs within 4 years from permit issuance, in order to prove their effectiveness in improving water quality and protecting beneficial uses. The Federal Phase II NPDES Permit requirements do not require any monitoring with the first permit or in the future.

Since cities will be required to use DOE's approved list of BMPs, Ecology should be responsible for monitoring results from the BMPs prior to requiring the cities to monitor results for Ecology. Alternatively, if Ecology is to require Phase II communities to monitor results from BMPs in the future, Ecology should fund monitoring, and ensure a collective peer advisory committee approach be formed to assist state efforts. If multiple MS4s are duplicating the monitoring efforts on monitoring outfalls from BMPs, it seems wasteful of taxpayer monies.

Results will also vary from municipality to municipality, and from monitoring personnel to monitoring personnel, therefore an overall science based, monitoring strategy that can gather watershed data to produce practical results from trend assessments should be managed by Ecology. These assessments should include information from stormwater management as well as results and policy/management feedback process from other state, county and environmental groups and programs. Having a centralized monitoring strategy on a basin planning level with shared monitoring, lends to more usable data for trends assessments. The cost implications for future monitoring are enormous for this requirement, and there are too many variables and factors that affect environmental conditions that will distort data gathered from each of the municipalities' monitoring efforts. The peer advisory committee approach is the most practical and efficient methodology to gather meaningful and consistent monitoring data.

Ecology should present this approach to the legislature during the next session and make the case to them to fund centralized DOE manager to oversee a shared basin monitoring approach.

Monitoring Outfalls:

The Federal Register requires five minimum control measures be implemented within each MS4s' jurisdiction. Ecology's permit requires an additional monitoring plan (end of pipe discharge) be implemented within the Storm Water Management Program and administered by each MS4. The monitoring requirements in the Draft NPDES Permit are clearly beyond the Federal Register guidelines and are unfunded mandates because of their excessive costs.

By exceeding the federal regulations, the following potential problems may arise:

1. creating "takings" claims from property owners, and 2. establishing unattainable and costly standards without providing requisite funding. The first issue has been previously discussed in the "pre-development" discussion of this letter. However, the second issue presents enormous concerns that arise from many smaller cities' potential to be "out of compliance" and therefore subject to legal actions from third party groups for failing to comply with the permit requirements.

We recommend that Ecology remove any reference to the development of a monitoring plan from permit requirements.

Timing of Phase II Implementation and Permit Fees Received:

The Draft NPDES Permit requires numerous deadlines to be met within the next five years of the permit, starting March 2007. What support from the state, beyond imposing more stringent requirements than the Federal NPDES guidelines, will be allocated to help cities meet these deadlines? Is it possible to apply for a timing variance in case budgeting and resources are not available? The City recommends changing the program timing to start in 2008 and reporting in 2009 to provide MS4s time to educate, disseminate, plan, allocate, and budget for the Final NPDES Phase II requirements.

When the permit is finalized during fall of 2006, as anticipated by Ecology, MS4s will have to determine an initial budget amount for each year of the permit, in order to allocate sufficient resources to comply with the permit. The budgeted amount will be dependent upon the state permit being issued during September 2006. Most city budgets are submitted for review much earlier than October, so city budgets will not be able to accommodate the cost of meeting permit requirements until the 2008 budget year.

Please indicate within the Fact Sheet how permit fees will be used to assist MS4s to maintain coverage under the umbrella of the permit, and if permit holders cannot meet certain deadlines, what sort of assistance will be provided from the fees submitted to the state? Phase II communities are required to provide financial accountability reporting (Permit Section S9) and submit the information to Phase II communities. Ecology must provide more details on how the state will use the Phase II permit fees of approximately \$3,000,000.00 to assist Phase II communities to comply with the permit.

Financial Reporting:

The financial reporting provision within the permit requires municipalities to provide cost accounting tracking that breaks down all permit-related costs. Having to break down all

permit-related costs within our present accounting system will require an excessive amount of time, resources, and funds that could be better utilized improving water quality in the waters of the state.

If the goal is to establish a baseline cost for the Storm Water Management Program (SWMP), then comparing expenditures between municipalities will not be of any value to Ecology, since all municipalities have differing operations and maintenance tasks to complete and different cost accounting procedures.

The City recommends that the cost accounting requirements in the Draft NPDES Permit be removed as a requirement. The federal guidelines do not require reporting to include cost information. We believe it is unreasonable to request a segregation of SWMP activities that does not provide a direct correlation between dollars expended and a successful stormwater program.

State Staffing Concerns:

Ecology will receive funds from the Phase II communities through annual permit fees, but there have been statements made by Ecology indicating that they do not have adequate staff hired to properly review the Phase II programs that will be submitted. Ecology not having a set plan to administer reviews of submitted permits leaves MS4s wondering how liability will be averted, especially since the state is implementing a permit program establishing standards that far exceed the federal rule requirements.

The lack of a defined review process increases risk and liability exposure to MS4s. We recommend Ecology set up a review and compliance process in order to guarantee timely review of permits. In addition, if state review reveals an "out of compliance" status from submitted annual reports, a procedure should be established to provide Phase II permit holders the opportunity to respond to comments received from the annual reports and to achieve compliance.

In addition, if a permit holder is challenged legally for not complying with the permit, but Ecology reviewed and determined that the MS4 is in compliance, then the state should be obligated to participate in the legal defense for the permit holder.

Overall, the permit goes beyond what the advisory committee agreed upon in late 2003, which was to create a permit that would be environmentally sound, feasible, practical, and that provided legal protection to Phase II communities in compliance with their permit.

We believe the state Legislature should be requested to authorize the implementation of the Draft NPDES Permit before Ecology implements the permit. The permit exceeds the Federal NPDES Phase II Storm Water Permit requirements and conflicts with state laws relating to vesting, property rights, growth management and is an unfunded mandate.

We are concerned that existing businesses may choose to relocate or new businesses may choose to locate in other states due to the increased regulatory burden caused by the Draft NPDES Permit that exceeds the standards adopted by other states to implement the same Federal NPDES Phase II Storm Water regulations. This proposed permit could certainly be seen by the business

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community as yet another example of regulations imposed by a state agency that is unfriendly to business.

The City wishes to express its appreciation for your efforts and looks forward to participating in bringing the permit to its final form. The City of Renton is also providing detailed comments in the attached table to address specific Draft NPDES Permit language. If you have any questions, please contact me at 425-430-7311.

Sincerely,

Lys Hornsby Jr 62

Gregg Zimmerman, P.E.
Administrator

Attachment

cc: Jay Covington, Chief Administrative Officer
Larry Warren, City Attorney
Lys Hornsby, P.E., Utility Systems Director
Mike Stenhouse, Maintenance Services Director
Neil Watts, Development Services Director
Ron Straka, P.E., Surface Water Utility Supervisor
Steve Lee, P.E., Surface Water Utility Engineer

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
1	S1.A.1	5	10 to 11	Implemented throughout entire incorporated area of the City	This requirement exceeds the Federal regulations pertaining to the Phase II NPDES permit, which requires it to only apply to the census urban defined areas with populations of 100/ square miles. There are areas within cities that do not meet this criteria due to large areas that are industrial and commercial land uses.	Ecology should recognize that this exceeds the minimum standards and reduce some of the other standards that exceed the Federal regulations to recognize that the permit will cover areas where technically and legally should not be applied.
2	S1.C.2.c	6	28	"commuter"		Add, "and any non-residents regularly employed in the areas served by the small MS4."
3	S2.A.2 Authorized Discharges	9	32 to 35		Discharges do not require permits and new discharges are permitted through construction permits, not through NPDES permits.	Delete this section since firefighting activities are required and sometimes pollutants will occur as a result of fighting forest fires, roadside fires, large home/industrial fires and may discharge into ditches and streams downstream.
4	S2.C	10	12 to 14	"firefighting activities"	Firefighting activities will occur in forests and homes with pollutant discharges.	
5	S2.D	10	15 to 18		Delete entire section because State regulations define who is responsible for spills and cleanup in WAC 173-303 and WAC 173-340.	Delete this section.
6	S4.F	11	22 to 28		Add to end of the section, "fulfilling the requirement of using best management practices, (BMPS) to the maximum extent practicable (MEP), the Permittee fulfills the terms and conditions of this permit."	Add City suggested text in Comment section.
7	S4.A & B	11	5 to 12	Including RCW 90.48.520 & WAC 173.210A in permit	Including the requirement to comply with RCW 90.48.520 & WAC 173.210A in the Permit exceeds the Federal NPDES Phase II regulations and increases liability. A Permit Holders failure to comply with these State statutes would violate a Federal permit (Clean Water Act), which unnecessarily increases liability.	Ecology should develop a separate permit to implement RCW 90.48.520 & WAC 173.210A through a separate rule making process provided it is authorized by the Legislature.

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
8	S5.A.3.a	12	18 to 19	"Permittee shall track the cost of development and implementation of the SWMP."	This section should be deleted because not much is gained from tracking costs associated with development and implementation. Better use of stormwater fees can be targeted towards fixing illicit discharges or other stormwater programs than tracking costs for Ecology. We fail to see the benefit of implementing this permit program, especially since it may not offer any real evaluation of program success or meet MEP.	This requirement may change the structure of the local government's financial recording system, which would cause us to spend more on breaking down costs. This requirement should be completely removed from the permit.
9	S5.C.1.a Public Education and Outreach	13	11 to 13	"behavior changes"	The Permit specifies that behavioral changes shall be measured through a couple of target audiences. The City feels that measuring behavioral changes is a research report requirement that allocates stormwater taxes away from projects that make a difference in improving storm water quality.	Permit language should strike out behavioral measures or targeted behaviors of others. It is extremely difficult to quantify a public education program. Again wasted monies targeted towards this task could be better used to benefit actual pollution control measures. It is beyond the scope of the national permit requirements, therefore this requirement should be taken out of the permit.
10	S5.C.1.a Public Education and Outreach	13	7, 11	"The outreach program shall be designed to achieve measurable improvements"	Public education and outreach is a federal requirement and the City will abide with this requirement. But using language that includes "shall", places liability upon the Permittee to achieve outreach effectiveness when it is a subjective opinion. The language should be modified within the Permit.	The City recommends permit language be changed to "summary of outreach results to be provided with no effect, some effect, or significant effect determinations upon behaviors."
11	S5.C.2.a	14	31	"implementation"	Public input should be limited to development and update of the program. The implementation and operation is an agency role to meet all regulations and not a public role.	Strike out wording, "implementation".
12	S5.C.3	15	2	"prevent"	Using the word "prevent" may be misconstrued and impossible in some cases when in connection with illicit connections and discharges.	Recommend replacing the word "prevent" with "discourage".
13	S5.C.3.	15	3	"including spills"	This program of preventing spills will have potentially very high costs with significant year to year cost changes.	"spills" should have additional clarifications on what is required. Historically, Ecology has been mandated to address spills, costs for localities to incur spill containment would be drastic with training also needed.
14	S5.C.3.b	15	33	"ordinance or other regulatory"	How a local government develops and implements is the local government's decision.	Strike out wording, "ordinance or other regulatory mechanism". Local governments can use and apply as a "policy" item in addition to ordinances.

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
15	S5.C.3.b	15	34	mechanism to effectively prohibit non-stormwater, illegal discharges	The City can develop ordinances, adopt, and implement, but public will still attempt to discharge illicit non-stormwater and dump into the system. Text here should be modified.	Text change to "mechanism to attempt to prohibit non-stormwater, illegal discharges".
16	S5.B.3.b.ii	16	22	"lawn watering"	Lawn watering should be taken out of the list. It will be impossible for MS4s to respond to every complaint filed for lawn watering. In addition, not complying to every complaint would jeopardize our permit and place us in risk of legal argument from third parties claiming we are not enforcing our ordinance. This would become a massive resource drain on the stormwater program.	Strike out all references to lawn watering.
17	S5.C.3.b.iii	16	38	Delete all of section iii.	This section is redundant and unnecessary.	Delete section.
18	S5.C.3.b.ii	16	16 to 21	line 16 to line 21	The City's Water Department or other Water Districts operate according to state DOH regulations. The discharge levels for pH and chlorine residuals should be checked for compliance with DOH regulations on discharge plans to ensure redundancy or conflicting standards are not adopted.	-

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
19	S5.C.3.c	17	28 to 30	IDDE Manual	To implement using the IDDE manual, various chemical analyses will be needed to characterize chemicals, etc., in stormwater. This will be both costly and time consuming to the IDDE process. Some chemical analyses will be too costly to implement and may require additional funding subject to Council approval prior to implementing the characterizations. This also introduces a water quality monitoring component exceeding Federal requirements, which we object to including in this Permit. In addition, there is a possibility that removing all "non-stormwater discharges" may be an impossibility, so compliance with the permit is suspect. If the IDDE manual is to be required as an implementation device, a public review process must be enacted, reviewed, and concurred with regulatory review. As such, this document cannot be mandated as a required document.	The IDDE Manual should be referenced as a technical guidance manual and not made a regulatory standard that has to be followed as part of this Permit.
20	S5.C.3.f.l	18	40	"illicit discharges [redacting] spills, improper disposals and"	Ecology will be contacted for cleanup and disposal with tracking done by Ecology on spills and improper disposals.	Remove the inclusion of spills and improper disposal from the Permit requirements in this section.
21	S5.C.3.c.v	18	12 to 19	line 12 to line 19	Issuing a Permit with the requirement to "fully terminate" may be impossible to attain due to the unsure nature of illicit discharges from "unknown" multiple sources. Not all illicit discharges will be able to be solved. For example, a discharge can be found to contain high levels of a certain prohibited discharge, but uncontrollable due to a large number of migratory birds. Permit language should be modified so Permittee is not left with a fully unattainable Permit condition.	"Termination" language should be re-written to, "attempt to terminate to MEP". In addition, in the event of litigation the 180 day correction requirement may be unattainable. Permit language should be written to address timing delays due to litigation.

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
22	S5.C.3.d.ii	18	26 to 29	The requirement to keep records of all calls is operationally impossible. These calls can come into and be responded to by various Departments within a City (Police, Fire, Public Works, Parks, Customer Service, etc.). The administrative burden created by the requirement to keep records of the calls and to report them in the annual report is onerous, a waste of public funds, and not beneficial to water quality.	Remove the record keeping and reporting requirement of all calls.	
23	S5.C.3.e	18	28 to 29	include a summary in the annual report	The requirement to include a summary of all information related to the IDDE program in the Annual report is an administrative burden that is a waste of public funds and not beneficial to water quality.	Remove the requirement to summarize the detailed information in the annual report from the permit. Remove the requirement to include the tracking numbers and type of spills, types of illicit discharges identified and inspections made. Allow the summary to be more of a general statement.
24	S5.C.3.f.ii	19	4	all municipal field staff	The requirement to require that all municipal field staff is trained to identify and respond to illicit discharges is unrealistic.	Delete "all" from the permit and leave it at municipal field staff. The City should get to determine the appropriate staff and number of staff that needs this training.
25	S5.C.4.a.ii	19	41	"will" protect	The permit states that implementing the BMP selection and design criteria "will" protect water quality. If this is a fact, then why require future monitoring of the BMPs.	Strike out wording "will" and replace with "attempts to".
26	S5.C.4.a.i.	19	36 to 38		The Permit requires the Permittee to implement Appendix 1 for Controlling Runoff, and also to plan monitoring activities of approved Ecology BMPs (monitoring section). Line 38 specifies BMPs applied in Appendix 1 is a requirement and equal or better protection of receiving waters is a local requirement. With the statement made in the last sentence of section I, the Permit eludes that there is a pollutant discharge level using Appendix 1 BMPs. The application of the BMPs in Appendix 1 must be deemed met to meet AKART and MEP requirements, with the exception of requiring forested condition for new and redevelopment projects.	Revised Appendix 1 to not require the forested condition on new and redevelopment projects. Cite that application of Appendix 1 BMPs are deemed to meet AKART and MEP requirements for controlling runoff from new development, redevelopment and construction sites.
27	S5.C.4.b.vii.	21	12	Erosivity Waiver	The permit section S5.A.b specifies that Erosivity Waiver can be applied for to submit a SWPPP if the project is found to comply with Appendix 1's criteria. Appendix 1 references 5 acres or less, while Section S5.A.4.b specifies project sizes that disturb land 1 acre or greater.	Ecology should clarify this discrepancy between 5 acres and 1 acre. Within the "Fact Sheet", the 5 acre threshold appears to be the threshold for Erosivity Waiver and agrees with the Appendix 1 threshold, the Permit threshold is 1 acre. Or does this waiver only apply for projects between 1 acre and 5 acres? Clarification is needed.

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
28	S5.C.4.c.ii	21	40	"typical maintenance"	It is unclear what typical maintenance is in this requirement.	See comment S5.C.4.c.ii
29	S5.C.4.c.ii	21	42	"less than \$25,000"	Smaller MS4s will have projects needing Council and yearly approval budgeting if projects are a certain size or larger. These projects may also be amounts between \$10,000 and \$25,000, which require a longer Permittee approval process through Council. Ecology needs to account for this. In addition, litigation may delay long term O&M of post construction facilities and BMPs. This should be accounted for within the Permit language.	All references with the \$25,000 or less should be explained to the Permittee. How was this amount determined? Perhaps clarification is needed to be placed in the Fact Sheet.
30	S5.C.4.c.ii	21	28 to 29	"Chapter 4 of Vol...."	The use of Chapter 4 Volume V of the 2005 Stormwater Management Manual for Western Washington is referred to as a Guidance Manual only. If a City does not meet the specific requirements of Chapter 4 of Volume 5 of the Ecology Manual, then the jurisdiction would not be in compliance with the permit. This should be referenced as guidance and not a mandatory requirements in the Permit.	Revise the section to cite Chapter 4 of Volume 5 of the Ecology Manual as guidance that the Permittee could use.
31	S5.C.4.c.iii	22	3	"including catch basins."	The catch basin frequency should be changed to once before end of the term as it is specified in Page 23, line 35. This first inspection frequency should only be for water quality and detention facilities. Not catch basins, as was specified on line 3, page 22.	Delete the reference to catch basins in this section.
32	S5.C.4.c.iv	22	13	"i.e., 1 to 2 years following sub-division approval"	By sub-division approval, does Ecology mean Engineering Plan approval? It is unclear what Ecology means by sub-division approval. Or does it mean Final Plat Approval after final mylars are submitted for recording to start the bonding process?	Clarify "subdivision approval" to final plat approval or final engineering approval.

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
33	S5.C.4.e	22	27 to 31	Make NOI available	Construction projects must get a construction NPDES permit from Ecology. Ecology is the state agency responsible for administering and enforcing this permit requirement. Adding the requirement to the MS4 permit, adds liability to the MS4 to ensure that the information is "made available" to applicants. The City is under no legal obligation to ensure that projects comply with state or federal regulations, it is the state or federal agency that has the permit authority to ensure that the project complies with their permit.	Remove the section from the permit.
34	S5.C.5.a	23	17		Timing provided in this requirement may not be achievable due to additional sensitive permits, including ACOE 404 Permitting, WDFW Hydraulic Project Approval, Ecology 401, and Section 7 review. No matter what the monetary amounts are to complete the project, these permitting processes must be followed and therefore timelines may not be able to be followed within the permitting in Section S5.C.5.a	Add, "unless delayed by additional regulatory or court decision Add, "unless delayed by additional regulatory or court decision" permit processes beyond the applicants control"
35	S5.C.5.a	23	18	"less than \$25,000"	Again where does the less than \$25,000 come from? Please explain within the Fact Sheet.	Modify language to stipulate that after defects are found to be the Permittees responsibility, all timing will be followed as required by the Permit. For example, certain pipes may be within MS4s or private facilities, but it would require some time to determine who owns the responsibility to "fix" the problem.
36	S5.C.5.c	23	29	(greater than 24-hour, 10-year storm)	How was this determined to be a "major storm". Most Cities typically inspect facilities or respond to calls regarding problems with facilities during or following storms. The permit is dictating how a city should conduct normal operations, which is inappropriate and exceeds the Federal requirements.	Provide justification for this storm to be deemed a major storm. Remove this section from the permit or at a minimum revise it to be the 24-hour, 25-year storm.
37	S5.C.5.g.iii and iv	24	26 and 27		Vegetation disposal and trash management are handled by another state control act for solid waste regulations. Do not include within this permit.	Strike out, "vegetation control and trash management".

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
38	S8.C.1	33	32	"are encouraged to participate in"	Language stipulates that it is an option for Secondary Permittees to participate or not participate in the monitoring program. Most, if not all, Secondary Permittees will not participate in monitoring if language is written as is.	Recommend changing to "participate in monitoring activities".
39	S8.C.1	33	36	"effectiveness monitoring"	According to the permit, the City is required to implement the BMPs and also monitor BMPs effectiveness. The City views this effectiveness monitoring on BMPs as a future requirement to prove to Ecology that required BMPs are valid. If these BMPs are required to be placed within the MS4s, then it is the understanding that they are State AKART and does not warrant additional monitoring. Monitoring should have been done by the State to justify the requirement of using the BMPs. If the State would want more information, then monitoring BMP effectiveness should be a State task.	Testing of BMPs should be a State task and if this is a requirement of the Permit, then funds should be provided by the State for this activity and the State should have concluded prior to listing them within the "required State" SWMM for Western Washington.
40	S8.C.1.b	34	38 to 39	delete, "receiving water"	Monitoring receiving waters is outside of local control. BMP effectiveness monitoring is outside of local control because the receiving waters may be outside of local jurisdictional control.	Delete receiving waters.
41	S9.A to S9.D	36	-	Annual Reporting	In general, the annual report deadlines provided in the annual report Form 1 do not correspond correctly with Permit timelines. Most of the permit requirement deadlines are based upon the effective date of the Permit with either 1.0 year or 0.5 year incremental due dates. If the deadlines are followed, then various annual reporting dates during March 31 of each year will not have some information. For example, if permit requirements are due 2 years from the effective date and the effective date is during September of 2006, then the reporting date permit requirement is during September of 2008. This occurs throughout the annual reporting timelines with some deadlines falling after the annual permit due date.	Ecology should modify the deadline for completion dates provided in Form 1 of the Annual Report Form in the Appendix.

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
42	S8.C.2.b	36	13 to 15	Monitoring and collaboration between jurisdictions	It is unclear if collaboration allows consolidation of monitoring sites and activities. For example, if two MS4s collaborate on BMP effectiveness monitoring, are the two MS4s required to come up with 4 different types of BMP monitored sites?	Please answer and clarify with the permit how collaboration should fit into this system and if total monitoring sites can be combined.
43	S9	36		Annual Financial Reporting	See City of Renton Comment Letter for comments on Financial Reporting.	Delete financial reporting requirement.
44	G5 Right of Entry	38	31	"reasonable time"	Reasonable time should be defined.	Representatives of Ecology should notify Permittee to gain access prior to entering onto premises. Various unknown conditions may result in difficult to gain entry ways due to obstructions by private property owners or gaining private property owner access rights.
45	G9.E Flow Measurement	40	4	"appropriate flow measurement devices"	It is unclear what Ecology means by "appropriate" flow measurement devices and their calibration. Does Ecology require as a condition of the Permit that MS4s calibrate their software, hardware, and measurement devices as a condition and also document the calibration and testing?	Clarify what Ecology means by appropriate flow measuring devices. Provide examples.
46	G9.E Flow Measurement	40	11	"for a minimum of three years"	Permit Special Conditions S9.C specifies "all records" to be kept a minimum of 5 years and may be requested by Ecology as far back as 5 years.	
47	G9.G Additional Monitoring	40	19		The statement, "Ecology may establish specific monitoring requirements in addition to those contained in this permit by administrative order or permit modification." This statement should be re-worded. Ecology is leaving monitoring on an open ended case that may become too cost prohibitive if the source cannot be determined.	Language should be rewritten to allow for MEP based upon State AKART.
48	G14.D	41	29 to 30	"cumulative effects on environment"	Many of the Permit monitoring criteria, especially newer BMPs, will take time to implement. Therefore, modifying a permit or revoking the permit may be a premature decision.	Delete this section.
49	G12.D Revocation of Coverage	41	6 to 7	"determination that the permitted activity endangers human health or the environment"	The statement is too far reaching and may subject Permittee to be out of compliance quickly.	

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National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

Comment	Permit Section	Page	Line	Draft Permit Language	City Comments	Recommendations
50	S8.C.1.a and c		-	Stormwater Monitoring and BMP effectiveness monitoring	<p>These two long and short term monitoring requirements will lead to inconclusive data. Multiple jurisdictions can have the same discharge site, with two or more samples being gathered in the same basin or sub-basin. This sampling serves little or no benefit with a great potential for duplicate monitored sites.</p>	<p>A lead review monitoring consortium group (similar to the Shared Strategy for Puget Sound) should manage designated monitoring activities/sites. The lead monitoring site person should manage all MS4 monitored sites in order to more efficiently analyze data after collecting 'useable' data. This lead person should coordinate with Phase I communities and the applicable 90% of MS4s that are located within Phase 1 communities. Hard earned public tax dollars should not be ineffectively spent duplicating efforts. It was written within the NPDES Phase II Western Washington Fact Sheet, page 20 - line 24 to 27, that the importance of coordination between all jurisdictions results in cost savings with more usable water quality data from all jurisdictions be implemented. This Fact Sheet statement contradicts with Permit requirements for effectiveness monitoring of BMPs and also the stormwater monitoring requirement. The Permit should be modified to have a lead agency administer the monitoring with MS4s participating. This will require review by the state legislators due to Ecology need</p>
51	S7	32 to 33	2			<p>As written the TMDLs can be changed by Ecology in the current draft during the permit cycle. This Permit issuance should require TMDLs as listed by the Federal TMDLs only, and constitute the constituents to be monitored as specified by the Federally approved TMDLs. Each TMDL will require planning, council approval, and time to establish into the City's stormwater budgeting and workplan. Therefore, time and money must be determined prior to immediately implementing TMDLs.</p> <p>Language modified to "the Department will require Federally approved TMDLs approved by EPA to be part of the Permit requirements. Any EPA TMDLs approved after the Permit issuance will not be a required TMDL until the next Permit cycle."</p>
52	S8.C.1	33 to 34				<p>It is unknown what Ecology desires from the BMP effectiveness monitoring portion of the project. If Ecology desires where certain BMPs will be effective at different locations, then the proposed monitoring plan is unlikely to answer those questions. Between state vesting laws, permit timelines, and construction schedules, the time lag between new technical standards and construction can be up to 5 years. This is between the adoption permit and through construction.</p> <p>Ecology should coordinate testing at known sites with new BMPs.</p>

City of Renton
National Pollutant Discharge Elimination Systems (NPDES)
Phase II - MS4s

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53 General Comments	Entire Permit			The NPDES Phase II Permit needs to consider Initiative 933 and the property fairness initiative on protecting rights that limits the burden on excessive regulations. The methods employed by the NPDES permit is to employ a top down approach through regulating and limiting stormwater discharges through employing a forested pre-existing runoff matching criteria. This is especially important with existing urban lands needing redevelopment. If a pre-existing criteria will limit property owners right to develop on urban land that has existing impervious areas and if Initiative 933 passes, then the State will then be required to compensate property owners for losses due to stormwater regulations imposed that has devalued properties and reduced developable land.	Recommend sending the Draft Permit to the Legislature for approval and review against state GMA and other state initiatives.	
54 General Comments	Various	Various		References to the Ecology stormwater manual is made throughout the permit other than that which relates to the Manual's minimum requirements, thresholds, and definitions, adjustments and variance criteria. It appears the permit's defacto reference is back to the Ecology Manual, which is not wholly part of the Permit. Defacto comments are beyond the minimum technical requirements of the Clean Water Act.	Delete references made throughout the permit other than that which relates to the Manuals' minimum requirements.	
55 All Sections				"waters of the state"	Delete all references to waters of the state, to waters of the US. There exists discharges to the Puget Sound which are waters of the US. Numerous references are found in the permit with 'waters of the state' referenced. These all should be changed to waters of the US.	